

Message Text

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TO AMEMBASSY GEORGETOWN NIACT IMMEDIATE

C O N F I D E N T I A L STATE 214581

EXDIS

E.O. 11652: GDS

TAGS: EMIN, EINV, GY

SUBJECT: BAUXITE LEVY

REF: GEORGETOWN 1721, GEORGETOWN 1733.

1. UNDER THE CONDITION IMPOSED BY THE BAUXITE LEVY BILL

..... A SITUATION OF

CONFRONTATION BETWEEN THE GOG AND REYNOLDS IN TEN DAYS
APPEARS ALMOST INEVITABLE. REQUEST YOU SEE BURNHAM AT THE
EARLIEST OPPORTUNITY TO DISCUSS THE FOLLOWING POINTS:

A) THE USG IS DEEPLY DISAPPOINTED IN GOG DECISION TO
PROCEED WITH LEGISLATION THAT UNILATERALLY IMPOSED BAUXITE
PRODUCTION LEVY. THIS IS PARTICULARLY SO IN VIEW OF THE
MANY CONSULTATIONS WE HAVE HAD WITH HIM ON THIS SUBJECT
OVER THE PAST SEVERAL YEARS--CONSULTATIONS IN WHICH THE
USG URGED MODERATION AND MADE EVERY EFFORT TO HEAD OFF
THE VERY SITUATION WE NOW CONFRONT. CONSIDERING THE
OFFICIALLY ANNOUNCED INTENTION TO NATIONALIZE REYNOLDS'
GUYANESE OPERATIONS BEFORE THE END OF THE YEAR, THE USG
MUST CONSIDER A TAX IMPOSED IN THE CONTEXT OF
NATIONALIZATION AS DESIGNED TO REDUCE THE COMPENSATION
THAT WILL BE DUE TO REYNOLDS UPON NATIONALIZATION. WE CAN
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NOT ACCEPT THE VIEW THAT THE TAX ISSUE IS ONE THAT CAN BE

SETTLED APART FROM THE QUESTION OF COMPENSATION. WHILE THE

GOG HAS THE RIGHT TO NATIONALIZE REYNOLDS, INTERNATIONAL LAW PLACES UPON THE GOG THE OBLIGATION TO PROVIDE REYNOLDS WITH PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION. SHOULD THE NEW BAUXITE TAX INFLUENCE THE ADEQUACY OF COMPENSATION PAID, APPLICABLE US LEGISLATION AND POLICY MUST BE CONSIDERED, AND THE GOOD RELATIONS THAT OUR TWO GOVERNMENTS HAVE ENJOYED MAY BE AFFECTED.

B) THE USG FIRMLY BELIEVES THAT A NEGOTIATED MUTUALLY ACCEPTABLE SOLUTION IS IN THE BEST INTEREST OF ALL PARTIES CONCERNED. WE ARE ESPECIALLY CONCERNED THAT A UNILATERAL ACTION, SUCH AS THE PASSAGE OF TAX LEGISLATION, CREATES AN ATMOSPHERE NOT CONDUCIVE TO CONTINUED TALKS. WE STRONGLY URGE THAT THE GOG TAKE SUCH STEPS AS ARE NECESSARY TO ALLOW GOOD FAITH NEGOTIATIONS TO CONTINUE. SHOULD IT BE FELT THAT NEGOTIATIONS ARE NO LONGER FRUITFUL, THEN SUBMISSION OF DISPUTE TO A NEUTRAL DISPUTE SETTLEMENT MECHANISM SUCH AS ARBITRATION SHOULD BE UNDERTAKEN.

C) AS THE GOG IS AWARE, THERE IS OPIC INSURANCE OF REYNOLDS. THE INVESTMENT GUARANTEE AGREEMENT ENTERED INTO BETWEEN OUR TWO GOVERNMENTS ON AUGUST 18, 1965 PROVIDES THAT SHOULD THE UNITED STATES MAKE PAYMENT TO ANY INSURER UNDER A GUARANTY ISSUED PURSUANT TO THAT AGREEMENT, THE UNITED STATES SHALL BECOME SUBROGATED TO THE INVESTOR'S RIGHTS. IF NEGOTIATIONS ARE NOT FRUITFUL, THE UNITED STATES MAY SUBMIT A CLAIM WHICH IT BELIEVES PRESENTS A QUESTION OF PUBLIC INTERNATIONAL LAW TO AN ARBITRAL TRIBUNAL FOR A SETTLEMENT BASED ON THE APPLICABLE PRINCIPLES OF INTERNATIONAL LAW. THUS, THE USG HAS THE RIGHT TO PURSUE RESOLUTION OF THE MATTER OF COMPENSATION BY ARBITRATION. HOWEVER, WE WOULD HOPE THAT A JUST SETTLEMENT NOW OF ALL OUTSTANDING ISSUES BETWEEN THE GOG AND REYNOLDS WOULD OBIATE THE NECESSITY FOR INTERNATIONAL ARBITRATION BETWEEN USG AND GOG IN THE FUTURE.

D) SANCTIONS IMPOSED BY THE BAUXITE LEVY BILL IN EVENT THAT REYNOLDS FAILS TO MEET DEADLINE FOR PAYMENT OF HALF THE PRODUCTION LEVY MAKE A NEGOTIATED SETTLEMENT ESPECIALLY DIFFICULT. THE THREAT OF ARREST OF THE LOCAL MANAGER OR PRINCIPAL OFFICERS OF REYNOLDS CREATES AN CONFIDENTIAL

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IMPOSSIBLE NEGOTIATING CLIMATE. THEREFORE, THE USG URGES THE GOG TO MAKE ASSURANCES THAT THESE HARSH PROVISIONS, THE EFFECT OF WHICH IS TO IMPEDE SETTLEMENT OF THE DISPUTE, WILL NOT BE IMPLEMENTED. FYI: FROM INFORMATION AVAILABLE HERE, RAMPHAL APPEARS TO BE CORRECT THAT MOST OF THE DETAILS OF THE GOG BILL WERE LIFTED VIRTUALLY VERBATIM FROM THE JAMAICAN LAW. END FYI.

E) WE WISH TO KNOW GOG INTENTIONS WITH REGARD TO NATIONALIZATION AND TO FURTHER TALKS WITH REYNOLDS; IN PARTICULAR WHETHER GOG WILL EXTEND INVITATION UNDER CONDITIONS THAT ASSURE COMPANY REPRESENTATIVES WILL NOT BE ARRESTED OR OTHERWISE MISTREATED.

F) THE USG RENEWS ITS OFFER OF GOOD OFFICES TO HELP BRING ABOUT A MUTUALLY ACCEPTABLE SOLUTION TO THE MATTER.

2. FYI: MEETING IN THE DEPARTMENT WITH REYNOLDS OFFICERS IS SCHEDULED FOR OCTOBER 1; WHILE COMPANY HAS NOT YET DECIDED ITS REACTION TO NEW LAW, WE ANTICIPATE THAT COMPANY WILL REFUSE TO PAY LEVY. END FYI. KISSINGER

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